



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2010

Mr. Jeff Law  
Executive Director  
Tarrant Appraisal District  
2500 Handley-Ederville Road  
Fort Worth, Texas 76118-6909

OR2010-14374

Dear Mr. Law:

~~You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 396623.~~

The Tarrant Appraisal District (the "district") received a request for six categories of information related to a specified third-party vendor. You state that some of the information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.149 of the Government Code. You also state you have notified CoStar Group Inc. ("CoStar") of the request and its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor and by CoStar. *See id.* §§ 552.304(a) (interested party may submit comments stating why information should or should not be released); .305(b) (party whose property interests are at stake may submit comments stating why information should be withheld).

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We first note the requestor contends the district failed to comply with section 552.301(b) of the Government Code by not seeking an opinion from this office within ten business days after receiving the written request. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

*Id.* § 552.301(b). The district states, and the requestor agrees, the district received the request for information on July 21, 2010. We note the tenth business day after July 21, 2010, is August 4, 2010. The district's request for a ruling from this office was postmarked on August 4, 2010. *Id.* § 552.308(a) (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, we find the district's request is timely under section 552.301(b) of the Government Code.

We next turn to CoStar's arguments under section 552.027 of the Government Code. Section 552.027(a) provides that "[a] governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public." *Id.* § 552.027(a). Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information:

books and other materials that are also available as research tools elsewhere to any member of the public. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

Interim Report to the 74th Legislature of the House State Affairs Comm., 74th Leg., R.S., Subcommittee on Open Records Revisions 9 (1994). Therefore, section 552.027 excludes commercially available research material from the definition of "public information."

CoStar claims a portion of the requested information, the CoStar Reports (the "reports"), constitutes commercially available information. However, CoStar states that access to the

reports is limited to subscribers subject to the terms of written license agreements that preclude dissemination of the reports to unlicensed third parties. CoStar further states that the reports are not within the possession of the subscriber, but available through the CoStar website, which requires a password. Where access to information is limited to certain individuals, such information cannot be said to be available "to any member of the public." Therefore, we find CoStar has failed to demonstrate the reports are commercially available for the purposes of section 552.027 of the Government Code. *See* Gov't Code § 552.027. Accordingly, the submitted information is not subject to section 552.027 and must be released, unless it falls within an exception to public disclosure.

We next turn to the district's argument under section 552.149 of the Government Code. Section 552.149 provides, in relevant part:

(a) Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of Section 552.021.

(b) Notwithstanding Subsection (a), the property owner or the owner's agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461(a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner's protest.

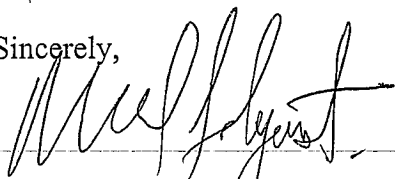
*Id.* § 552.149(a)–(b). The 81st Texas Legislature amended section 552.149 to limit the applicability of section 552.149(a) to those counties having a population of 20,000 or more. *See id.* § 552.149(e). We note Tarrant County has a population of 20,000 or more. The legislative history of the statutory predecessor to section 552.149 indicates it was enacted as a result of the issuance of several open records rulings of this office in which we ruled information provided by a local Multiple Listing Service ("MLS") to appraisal districts under confidentiality agreements is subject to required public disclosure under the Act. House Comm. on State Affairs, Bill Analysis, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). Because of these rulings, many MLS agencies stopped providing sales information to appraisal districts. The bill analysis of House Bill 2188 states the purpose of this statute is to allow the relationships between the local MLS and appraisal districts to continue. *Id.* You state the submitted representative sample contains data provided by CoStar, a private entity, to the district "to assist in commercial appraisal efforts." You also state the information provided by CoStar "is very similar in nature to the information provided by the [MLS]." Based on these representations and our review of the documents, we find section 552.149 of the Government Code applies to the information at issue.

We note a property owner or the owner's designated agent has a right of access to certain information that is confidential under section 552.149(a) of the Government Code. *See* Gov't Code § 552.149(b). However, we have no indication the requestor is an owner or owner's agent who has filed a protest regarding a specific piece of property. Accordingly, we find the information must be withheld under section 552.149(a).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/eb

Ref: ID# 396623

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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